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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,279	09/29/2003	Wolfgang Hartung	117163.00090	3123
21324 7590 07/17/2009 HAHN LOESER & PARKS, LLP One GOJO Plaza Suite 300 AKRON, OH 44311-1076				
EXAMINER ALTER, ALYSSA MARGO				
ART UNIT		PAPER NUMBER		
3762				
NOTIFICATION DATE		DELIVERY MODE		
07/17/2009		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patents@hahnlaw.com
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Advisory Action
Before the Filing of an Appeal Brief

Application No.

10/674,279

Applicant(s)

HARTUNG, WOLFGANG

Examiner

Alyssa M. Alter

Art Unit

3762

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 May 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/George R Evanisko/
Primary Examiner, Art Unit 3762

Continuation of 11, does NOT place the application in condition for allowance because: The Applicant argues that claim 3 and 11 are supported by the specification through figure 4, four electrodes placed in the atrium of the heart and two electrodes placed in the ventricle. This contention is not clearly depicted in figure 4. Regardless, dependant claim 3 recites "two or more floating atrial electrodes and two or more ventricular electrodes". Therefore, claim 3 recites, at least 3 floating electrodes, one atrial wall electrode and 3 ventricular electrodes. Which, in accordance with the Applicant's description of figure 4, "the present application shows four electrodes placed in the atrium of the heart and two electrodes placed in the ventricle of the heart" does not support the claim limitation of 2 or more additional electrodes placed in the ventricle.

Additionally, the Applicant argues that present application provides written support for the "wall electrode" and "floating electrode" being approximately the same size. The Applicant refers to the drawing, figure 4, of the present invention to provide support since they "appear to be about the same physical size with respects to each other and with respect to the gross dimensions of the heart shown in Fig.4" (page 6, lines 17-18 of Applicants arguments). Additionally Applicant states "Therefore, Applicants do not regard such a claimed attribute to be outside the scope of the present application. Furthermore, there is nothing in the known art to suggest that such an atrial wall electrode and floating atrial electrodes could not be of about the same physical size"(page 6, lines 19-21 of Applicants arguments).

On the contrary to the Applicant's contention, the examiner can not clearly and affirmatively observe the size dimensions of the electrodes provided in figure 4 (the figure is not in 3D also) to confirm the relative size of the electrodes to the heart or the hearts geometry. Furthermore, there is no indication in the specification to acknowledge that the electrodes are drawn to scale and of similar size. In addition, the mere absence of evidence ("nothing in the known art to suggest that such an atrial wall electrode and floating atrial electrodes could not be of about the same physical size") does not affirmatively provide support for such claim limitation. Therefore, the rejections of claims 3, 11 and 27 remain rejected under 112 first paragraph.

Additionally, claims are rejected under 112 2nd. The Applicant argues that the floating electrode line does possess a floating electrode, but that is not in accordance with the claimed limitations. The claims recite a floating electrode lead, but then employ a wall electrode, while the ventricular electrode line includes a floating atrial electrode. Therefore, if the floating atrial line does in fact possess a floating electrode, the examiner encourages the Applicant to place such a limitation in the claim to definitely recite and distinctly claim the subject matter.

As to the 103 rejections, the Applicant argues that Alt et al. does not provide a ventricular electrode line with an floating atrial electrode. The examiner acknowledges this, and states it would be obvious to modify Alt et al. to derive a leaded system with a floating electrode on the ventricular lead. Furthermore, the examiner indicates that it would be obvious to include multiple electrodes on one lead to combine the stimulation functions. The Applicant argues that such combination would not meet the claimed limitations, however the examiner contends that it would be obvious to modify the lead structures to include a floating electrode placed on the ventricular lead and the atrial wall electrode remaining on the atrial lead. Therefore, the modified Alt et al. thus meets the claimed limitations. Finally, the applicant argues that "atrial stimulation (not atrial defibrillation) is performed" in the claims. This argument is not persuasive since atrial defibrillation IS an atrial stimulation. Similarly, the applicant argues that Alt shows a large surface electrode and not a small surface stimulation electrode. This too is not persuasive since the claim does not state "a small surface stimulation electrode" but only an "electrode" for stimulation--which Alt's coil electrodes ARE electrodes for stimulation.